

Chief Standing Bear

A Person Under the Law



Prepared by...



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Cover Images: Chief Standing Bear, 1881. (BAE GN 04176A 06619801, Smithsonian Institution, National Anthropological Archives).
Niobrara River. (National Park Service). Statue of Chief Standing Bear in Ponca City, Oklahoma. (Wikipedia).

LAND OF THE SWIFT RUNNING WATERS

The Ponca are a small, peaceful tribe related to the Omaha that once lived along the Atlantic Coast, moving sometime before 1500 to the area that would come to be known as Minnesota. After attacks by the Sioux, they settled between the Missouri and the Niobrara rivers in what is now northern Nebraska and South Dakota. They considered this land of the Swift Running Water, as they called the Niobrara, their home.

Standing Bear was born in that region ca. 1829 or 1834. Known to his people as *Ma-chu-nah-zha*, he was a chief of the Poncas. He would eventually become a hero to many for his fight to be recognized as a person under the U.S. Constitution, but this would happen after his people had suffered from errors and injustice for many years.



Chief Standing
Bear, 1877.
(RG1227.2-2, Nebraska
State Historical Society)

In 1858, the Ponca signed a treaty giving up most of their land but allowing them to keep a small portion of it by the Niobrara River in exchange for schools, mills, and thirty years of annuities. In 1865, they relinquished an additional 30,000 acres in order to gain access to their old burial grounds.

However, in the 1868 Treaty of Fort Laramie with the Lakota nation, the U.S. government mistakenly included the Poncas' land in the Great Sioux Reservation. This mistake was not rectified, and it caused already-poor relations between the Poncas and the Brulé Lakota Sioux to deteriorate even further.

After brutal attacks by the Sioux, the Ponca chiefs signed a document in 1875 guaranteeing them land in "Indian Territory." The chiefs understood this to mean that they would live among the Omaha, their allies, on their Nebraska reservation, but the government used the term to indicate land that would later become Oklahoma.



Tents of the Poncas on the banks of the Missouri River as depicted by Karl Bodmer, 1833. (Library of Congress, *Early Western Travels 1748-1846*, vol. 25)

Ponca Land Transfers

Before the early 1800s
1858
1865
1868
1877

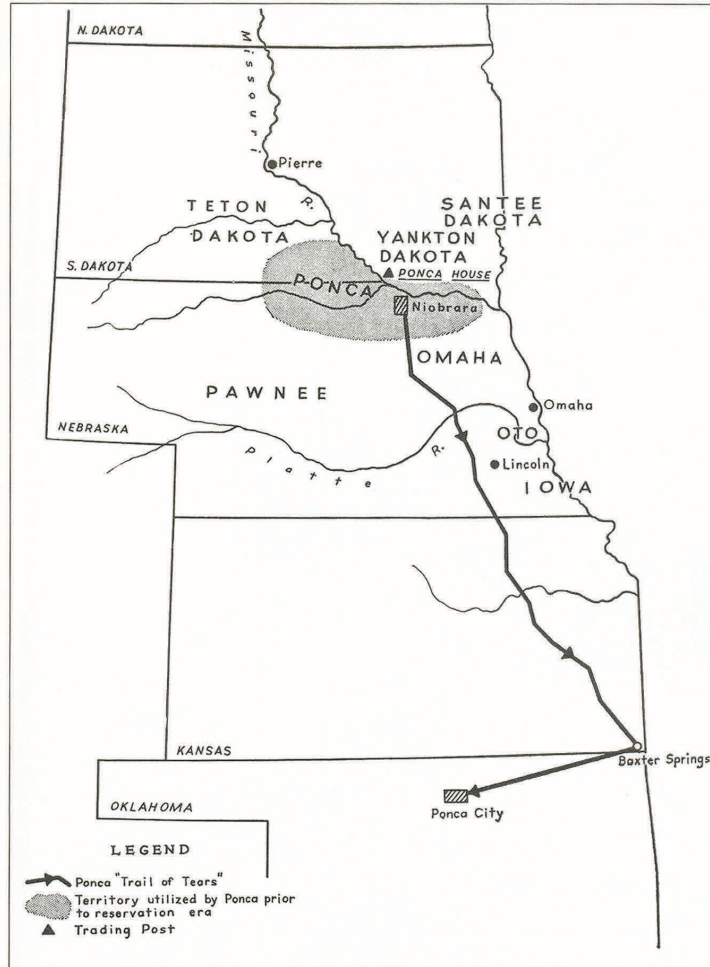
Poncas live in Dakota along the Missouri
Treaty signed with U.S. Govt. exchanging most land for services
Additional 30,000 acres ceded to U.S. Govt.
U.S. Govt. gives Poncas' land to Sioux in error
Following treaty, forced removal to Indian Territory

A TRAIL OF TEARS

In February 1877, ten of the Ponca chiefs were taken to Indian Territory to select land. Unhappy with the stony, malaria-ridden land, they refused to choose, and the agents abandoned them there. Left without an interpreter, food, money, or documentation, eight of the chiefs, including Standing Bear, walked the six hundred miles home. They arrived in Nebraska with bare and bloodied feet, their moccasins having worn out after the first ten days. Chief Standing Bear delivered a letter to the *Sioux City Daily Journal* that was published on March 31. In it, the chiefs recounted the events of February and described themselves as "weary and footsore and sick at heart." Chief White Eagle attempted to contact President Hayes but received no response.

On May 19, 1877, all of the remaining Poncas were forcibly removed. Soldiers accompanied the 523 individuals, who set out with whatever they could carry. As they left, the villages and all of their buildings were demolished by order of the inspector and agent. By the time they arrived near Baxter Springs, Kansas, on July 9, nine members of the tribe, including Standing Bear's daughter Prairie Flower, had died on the Ponca Trail of Tears.

Their fears about the relocation were well-founded: within two years, one-third of the tribe had died from disease. Standing Bear's sixteen-year-old son, Bear Shield, was one of those who became ill. Standing Bear promised his son that he would return his body to their home so he could be buried among their



523 members of the tribe were forced to walk the Ponca Trail of Tears, from the northern border of Nebraska to Oklahoma, in May - July 1877.

(James H. Howard, *The Ponca Tribe*. Bureau of American Ethnology, Bulletin no. 195, U.S. GPO, 1965)

ancestors, for according to traditional Ponca belief, this meant that he would not have to spend eternity alone.

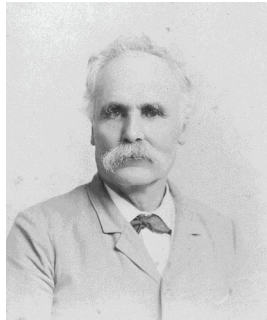
On January 2, 1879, Standing Bear and 26 other Poncas set out for Nebraska with the body of his son. The winter of 1879 was a harsh one, and several members of the group were sick when they left. Some settlers, seeing how hungry they were, shared food with them. Standing Bear's small band arrived at the reservation of the Omahas two months later. Omaha Chief Iron Eye and his daughter Bright Eyes gave them food and shelter and promised that they could remain as long as they wanted.

ARREST AND AID

Alerted to Standing Bear's disappearance, Secretary of the Interior Carl Schurz ordered General George Crook to arrest the band. Crook, noted for his exceptional service in the Civil War and the Indian Wars (General Sherman called him "the greatest Indian fighter and manager of the army the United States ever had"), privately disapproved of the government's policies toward Indians and felt that the Poncas had been treated unfairly. He assigned a detachment to make the arrest, but he spoke secretly with Chief Iron Eye and Bright Eyes in order to form a plan. At 1:00 a.m. on March 30, Crook met with Thomas Henry Tibbles, a former abolitionist and minister who was then working as an editor of the *Omaha Herald*. General Crook requested Tibbles' assistance with the Poncas'



General Crook. (Library of Congress, Prints & Photographs Division, LC-DIG-cwpbh-03770)

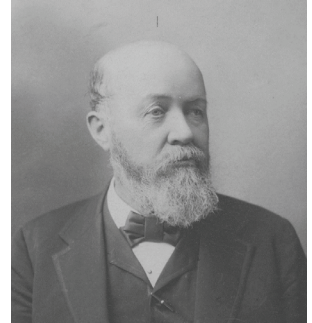
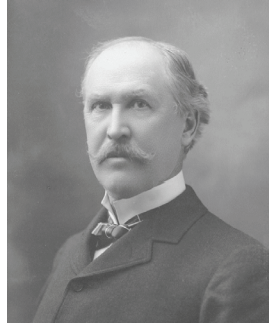


Tibbles. (RG2026-75, Nebraska State Historical Society)

situation, saying, "If we can do something for which good men will remember us when we're gone, that's the best legacy we can leave."

After visiting Standing Bear and the other Poncas where they were being held at Fort Omaha, Tibbles wrote about their plight in the *Herald*. He contacted two lawyers, John Lee Webster and Andrew Jackson Poppleton, who would represent Standing Bear in court.

According to Poppleton's memoirs, they sought a writ of habeas corpus at General Crook's suggestion.

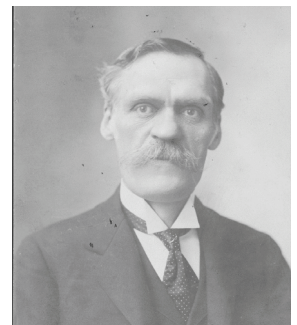


Webster; Poppleton. (RG2141-2350, RG2411-4419; Nebraska State Historical Society)

The group selected Nebraska District Court Judge Elmer Scipio Dundy, and on April 8, a writ of habeas corpus was issued in federal court for Standing Bear's right to be released and return to his land. It was the first of its kind. Washington was not pleased; Indian Affairs Commissioner Ezra Hayt declared that "[n]o attorney has the right or can appear for an Indian, until authorized to do so by the Indian Department." But the trial was set for April 30 nonetheless. Genio Madison Lambertson, U.S. Attorney for the District of Nebraska, would represent the defendant, General George Crook.



Judge Dundy. (RG2411-1422, Nebraska State Historical Society)

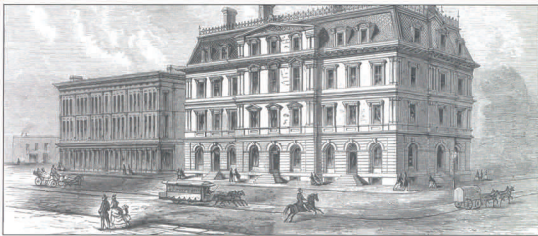


Lambertson. (RG2411-3082, Nebraska State Historical Society)

THE FEDERAL TRIAL

The judge was delayed a day, and on May 1, 1879, *United States ex rel. Standing Bear v. Crook* began in Omaha's federal courthouse. Many people crowded into the courtroom, attracted by Tibbles' publicity efforts. The purpose of the trial, Judge Dundy explained, was to determine whether Standing Bear and the group of Poncas had been lawfully arrested and detained.

When questioned, Chief Standing Bear said that he no longer considered himself a Ponca chief; he felt as poor as the rest of them. "I wanted to go on my own land, land that I had never sold. That's where I wanted to go," he said, through an interpreter. "My son asked me when he was dying to take him back and bury him there, and I have his bones in a box with me now. I want to live there the rest of my life and be buried there."



The federal custom house at Fifteenth and Dodge in Omaha, where the trial was held in 1879.
(from Oliver B. Pollak, *Nebraska Courthouses*, 2002)

Webster and Poppleton argued that the Fourteenth Amendment, which grants citizenship as well as equal protection and due process of the law to all persons born or naturalized in the United States, applied to all Indians "who did not owe allegiance to any other form of government, a citizen beyond all dispute." They contended that Standing Bear and the other Poncas had severed tribal relations. "If there is no precedent for the issuing of a writ on behalf of an Indian," Poppleton said, "then I say in God's name it's high time to make one!"

For the defense, Lambertson, basing his arguments principally on Chief Justice Roger Taney's decision in *Dred Scott v. Sandford*, argued that an Indian was not a citizen of the United States and was not entitled to sue in its courts. To the surprise of Webster and Poppleton, Lambertson announced that he would not call any witnesses and would rely only on the facts in the case.



Courtroom at the custom house. (Omaha Public Library)

"I see a great many of you here. I think a great many are my friends. You see me standing here. Where do you think I came from? From the water, the woods, or where? God made me and he put me on my land. But I was ordered to stand up and leave my land. Who the man was I don't know. He told me to leave and I had to go. It was hard for me to go. I objected to going. I looked around me for some one to help me but I found none. Now I have found some one and it makes me glad.

When I got down there it seemed as if I was in a big fire. One hundred and fifty-eight of my people were burned up; now I stand before you. I came away to save my wife and children and my friends. I never want to go there again. I want to go back to my old reservation to live there and be buried in the land of my fathers. If I can go there I may live some time longer."

– Chief Standing Bear

(from his speech as reported in "The Writ of Liberty", *Omaha Herald*, May 3, 1879)

After the legal proceedings had ended, in an unusual break from routine procedure, Judge Dundy allowed Standing Bear to stand up and address the court. Standing Bear spoke with the aid of an interpreter, Bright Eyes, the daughter of the Omaha chief.

According to Thomas Henry Tibbles, who would later write about the case many times, Standing Bear spoke metaphorically of how he stood before a wide river with his wife and child as a flood rose around them. He saw the way out and led his family forward, but as he did, a powerful man backed by soldiers blocked his passage. He knew that he had to obey the man's orders; if the man would not let him pass, he would sink beneath the flood. At this point in the speech, Standing Bear looked at Judge Dundy and said, "You are that man."

AN INDIAN IS A PERSON

On May 12, 1879, Judge Elmer S. Dundy issued a historic decision. "During the fifteen years in which I have been engaged in administering the laws of my country," the opinion began, "I have never been called upon to hear or decide a case that appealed so strongly to my sympathy as the one now under consideration." The judge noted that the Habeas Corpus Act allowed federal courts to issue writs to "persons" or "parties," but nowhere did it describe them as "citizens." "I must hold, then," he continued, "that Indians, and consequently the relators, are 'persons,' such as described by and included within the laws before quoted."

Judge Dundy also ruled that General Crook had rightful authority in removing the group of Poncas from the reservation, but his orders had been in error, for he was not instructed to convey them to the nearest civil authority. In

forcing the group to return to Indian Territory, the government would deprive the Poncas of their rights.

Judge Elmer Dundy summarized his opinion in *U.S. v. Crook*, 25 F.Cas. 695 (C.C.Neb. 1879) with five points:

"1. That an Indian is a 'person' within the meaning of the laws of the United States, and has, therefore, the right to sue out a writ of habeas corpus in a federal court, or before a federal judge, in all cases where he may be confined or in custody under color of authority of the United States, or where he is restrained of liberty in violation of the constitution or laws of the United States.

2. That General George Crook, the respondent, being commander of the military department of the Platte, has the custody of the relators, under color of authority of the United States, and in violation of the laws thereof.

3. That no rightful authority exists for removing by force any of the relators to the Indian Territory, as the respondent has been directed to do.

4. That the Indians possess the inherent right of expatriation, as well as the more fortunate white race, and have the inalienable right to 'life, liberty, and the pursuit of happiness,' so long as they obey the laws and do not trespass on forbidden ground. And,

5. Being restrained of liberty under color of authority of the United States, and in violation of the laws thereof, the relators must be discharged from custody, and it is so ordered."

AFTERMATH OF THE DECISION

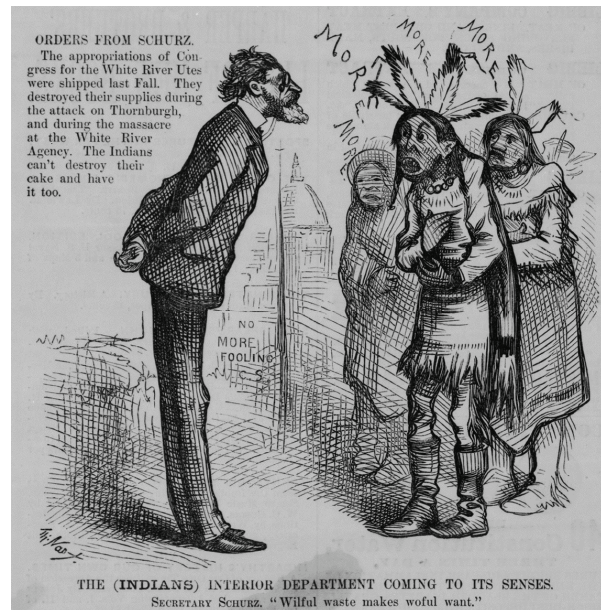
Reactions to the decision in the press ranged from fear (the *Rocky Mountain News* wrote that “the Indians will become a body of tramps moving without restraint wherever they please”) to elation, but none were more overjoyed than the group of Poncas who had accompanied Standing Bear in January and February. They were now allowed to remain at the Omahas’ reservation.

After the trial, Standing Bear, Thomas Henry Tibbles, and Bright Eyes set off on a speaking tour of the eastern U.S. Their intention was to inform the public about the story of the Poncas. Along the way several notable literary figures, including Henry Wadsworth Longfellow and Helen Hunt Jackson, joined the cause. Jackson became interested in the Indian situation after hearing Standing Bear’s speech and would go on to write notable works on the subject.

Judge Dundy’s decision did not affect all Indians. The day after the ruling, Standing Bear’s brother, Big Snake (who was not part of the original group who accompanied Standing Bear), left Indian Territory to trade horses, but he was arrested and told that the decision only affected the 26 Poncas who had left with Standing Bear. Big Snake said that he would rather die than continue living there. When he was arrested again in October because the Indian Affairs agent objected to his low morale, he resisted and was shot by an officer in the agent’s office. Witnesses testified that he was unarmed. Standing Bear was notified by telegram of his brother’s death while he was on the speaking tour, and the news upset him greatly. Big Snake’s death was later the subject of a congressional investigation.

Restitution was made to the Ponca tribe in 1881, but the geographical split would remain.

The tribe was eventually officially divided into two branches, one by the Niobrara in Nebraska, the other in Oklahoma not far from the site of their second relocation in 1879.



Cartoon by Thomas Nast satirizing Secretary of the Interior Carl Schurz and the Indian situation. It appeared in *Harper's*, Feb. 28, 1880. According to Tibbles, Standing Bear clipped the figure of Schurz from this cartoon and took it out and laughed from time to time. (Library of Congress)

United States ex rel. Standing Bear v. Crook signaled to many that U.S. government policies towards Indians were in need of considerable reform. In 1887, the Dawes Act was passed. It divided Indian tribal territories into plots of land for each individual, a move that at the time was seen as a step forward in Indian rights, but the consequential weakening of tribal structure and a flawed execution of the policy ultimately had a detrimental effect on Indian living conditions. The process of assimilation continued with the Indian Citizenship Act of 1924, which extended citizenship to all American Indians. Though these government actions had both negative and positive effects, the Standing Bear case was certainly responsible for a new regard for the rights of Indians.

The case also changed the lives of those who had participated in it. Thomas Henry Tibbles



Bright Eyes (RG2026-5, Nebraska State Historical Society)

and Bright Eyes (also known as Susette La Flesche Tibbles) married in 1881. They both went on to distinguished careers as writers and defenders of Indian rights. After her death, Bright Eyes was the first woman eulogized in the U.S. Senate.



Above: Chief Standing Bear with his remaining family. (Helen Hunt Jackson Papers, Part 1, Ms 0020, Box 9, Folder 10, Colorado College Special Collections)

General George Crook, the old Indian fighter, was so moved by the Standing Bear case, and angered by the surrender and forced exile of the Apache leader Geronimo, that in his later years he spoke out for the cause of Indian citizenship and against the wrongs committed by the government against Indian tribes. Tibbles did not reveal Crook's full role in the Standing Bear case until after his death in 1890.



Left: Standing Bear outside his home in Nebraska, 1906. (James H. Howard, *The Ponca Tribe*. Bureau of American Ethnology, Bulletin no. 195, U.S. GPO, 1965)

After a brief move to Indian Territory in 1889, Standing Bear returned to Nebraska and built a farmhouse by the Niobrara River. He would remain there with his family for the rest of his life. Though his story was well-known a few decades before, Standing Bear died in relative obscurity in 1908. He was buried near the village of his ancestors, where his descendants still reside.

Recommended Reading

Dando-Collins, Stephen. *Standing Bear Is a Person: The True Story of a Native American's Quest for Justice*. Cambridge, Mass.: Da Capo, 2004.

Howard, James H. *The Ponca Tribe*. Washington, D.C.: U.S. Government Printing Office, 1965.

Mathes, Valerie Sherer, and Richard Lowitt. *The Standing Bear Controversy: Prelude to Indian Reform*. Urbana: University of Illinois, 2003.

Starita, Joe. *"I Am a Man": Chief Standing Bear's Journey for Justice*. New York: St. Martin's, 2008.

Tibbles, Thomas H. *Buckskin and Blanket Days: Memoirs of a Friend of the Indians*. New York: Doubleday, 1957.

Tibbles, Thomas H. *The Ponca Chiefs: An Account of the Trial of Standing Bear*. Lincoln: University of Nebraska, 1972.